

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:03CV30-02-V  
(5:98CR246-2-V)

STEVEN CARR,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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ORDER

**THIS MATTER** comes before the Court on the petitioner's "Motion To Amend §2255," filed July 2, 2004; on his "Motion To Request Accelerated '2255' Response," filed August 9, 2004; on his "Motion For Leave To Supplement 28 U.S.C.A. §2255 Motion," filed December 2, 2004; on his "Motion Pursuant To Rule 8 Of §2255," filed December 22, 2004; and on his "Motion For Direct [sic] Verdict Of The 18 U.S.C. §2255 [sic] To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody," filed March 24, 2005.

A review of the record of this matter reflects that on March 5, 2003, the petitioner filed his Motion to Vacate. By that Motion, the petitioner raised claims of insufficiency of the evidence, Apprendi error, defective indictment, erroneous amendment of the Indictment, actual innocence regarding a sentencing matter, and ineffective assistance of counsel on certain bases.

Following its initial review of that Motion, on March 28,

2003, this Court entered an Order directing the government to file a response the petitioner's claims. On May 2, 2003, the "United States' Response To Petition And Motion To Dismiss" was filed. Such document argues, on several grounds, that the government is entitled to a judgment as a matter of law. Consequently, on May 19, 2003, the Court entered its standard Roseboro Order by which it directed the petitioner to file a reply/ response to the government's combined Response and Motion to Dismiss.

On June 3, 2003, the petitioner filed a "Response To Respondent's Motion To Dismiss." Such Response seeks to challenge certain factual points which were set forth in the government's arguments for dismissal.

Next, on July 2, 2004, the petitioner filed his first Motion to Amend 2255. There the petitioner asks the Court to allow him to amend his Motion to Vacate to include the case of Blakely v. Washington, 542 U.S. 296 (2004), as further support for his claim of Apprendi error. However, inasmuch as the Supreme Court has not stated that Blakely or, for that matter, Apprendi can be retroactively applied in collateral proceedings such as these, the petitioner's first Motion to Amend will be denied. See also United States v. Sanders, 247 F.3d 139 (4<sup>th</sup> Cir), cert. denied, 534 U.S. 1032 (2001) (Fourth Circuit stated that Apprendi cannot be retroactively applied in collateral proceedings under §2255); and United States v. Fowler, No. 05-6493, slip op. at 1 (W.Va.

June 17, 2005) ("neither Booker nor Blakely announce a new rule of constitutional law made retroactive by the Supreme Court to cases on collateral review.").

Regarding the petitioner's Motion To Request Accelerated 2255 Response, by which he actually seems to be requesting an expedited judgment in this case, such Motion must be denied. Indeed, the subject Motion does not identify a single reason why the petitioner's case should be taken out of order, or why an expedited judgement is required in this case. Thus, the petitioner simply cannot prevail on this de facto motion for an expedited judgment.

By his Motion for Leave to Supplement, the petitioner again requests permission to amend his Apprendi claim with a reference to the Blakely decision. However, as was already stated concerning the petitioner's first request to amend his Motion, neither Apprendi nor its progeny can be retroactively applied in proceedings such as this one. Therefore, this Motion for Leave to Supplement will be denied.

Moreover, to the extent that such Motion for Leave to Supplement is seeking to raise new claims--regarding alleged instances of prosecutorial misconduct--such Motion still must be denied. To be sure, any new claims which the petitioner might seek to raise after September 12, 2003, that is, the expiration of the 1-year limitations period set forth under the AEDPA, would be time-barred. Therefore, the instant Motion for Leave to

Supplement must be denied in its entirety.

Notwithstanding his numerous attempts to amend his Motion to Vacate, by his "Motion Pursuant To Rule 8 of §2255," the petitioner again seems to be seeking an expedited judgment inasmuch as that Motion asks Court "to make such disposition of his 28 U.S.C. §2255 as justice dictates." However, as has been noted, the petitioner has failed to present a legal basis to support this request. Furthermore, the petitioner's pattern of repeatedly filing motions to amend his pleadings would make the rendering of an expedited judgment all but impossible in any event. Therefore, this Motion will be denied.

Finally, the petitioner also has filed a Motion for a directed verdict in this case. There, the petitioner asserts, based solely upon the time during which this matter has been pending with this Court, that he is entitled to a directed verdict. Suffice it to say, however, even assuming that such an option is available at this point in the petitioner's proceedings, the petitioner's proffered basis for the Motion simply does not support the entry of a directed verdict in this case. Accordingly, this Motion also will be denied.

**NOW, THEREFORE, IT IS ORDERED:**

1. That the petitioner's Motion to Amend §2255 (document # 9 is **DENIED**;

2. That the petitioner's Motion to Request Accelerated '2255' response (document 3 10 is **DENIED**;

3. That the petitioner's Motion for Leave to Supplement his Motion to Vacate (document # 11) is **DENIED**;

4. That the petitioner's Motion Pursuant to Rule 8 of the Rules on Motion Attacking Sentence under §2255 (document # 12) is **DENIED**; and

5. That the petitioner's Motion for a Directed Verdict (document # 13) is **DENIED**.

**SO ORDERED.**

Signed: September 30, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees  
United States District Judge



